

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

BETTY J. FLEMING, Individually
and as Administratrix of the ESTATE
OF DORIS R. FLEMING
725 South Molloy Lane
Murfreesboro, TN 37129

Plaintiff

v.

**NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY**
One Nationwide Plaza
Columbus, OH 43216

and

GMAC MORTGAGE, LLC
2711 N. Hasdell Avenue, Suite 900
Dallas, TX 75204

Defendants

* * * * *

NOTICE OF REMOVAL

COMES NOW Defendant Nationwide Mutual Fire Insurance Company (hereinafter referred to as "Nationwide") and gives notice of its removal of this action to this Court, pursuant to 28 U.S.C. §1441.¹ In support of removal, Nationwide respectfully represents as follows:

1. On August 31, 2011, Plaintiff Betty J. Fleming, Individually and as Administratrix of the Estate of Doris R. Fleming (hereafter "Fleming") commenced an action against Nationwide and GMAC Mortgage, LLC ("GMAC") in the Chancery Court of Rutherford County, Tennessee as Case No. 11-cv-1330 (the "Chancery Court Action"). The United States

¹ Nationwide herein reserves its right to set forth additional defenses and objections to the claims asserted in this lawsuit. The filing of this Notice of Removal is subject to, and without waiver of, any such defenses and objections.

District Court for the Middle District of Tennessee is the district embracing where the action is pending.

2. Nationwide received notice of the Complaint on September 19, 2011 by certified mail. Pursuant to U.S.C. §1446(b), the time for filing this Notice of Removal has not yet expired.

3. Pursuant to 28 U.S.C. §1446(a), a copy of the pleadings and papers received by Nationwide are attached hereto. No other papers, pleadings, or process have been served on Nationwide in connection with this action.

4. Neither Nationwide nor GMAC have entered an appearance, filed any responsive pleadings, or filed any papers responding to Fleming's Complaint in the Chancery Court Action.

5. This action is one over which this Court has original jurisdiction under 28 U.S.C. §1331 and may be removed to this Court under the provisions of 28 U.S.C. §§1441 *et seq.*, and 1446.

6. This is a suit of a civil nature and involves a controversy arising under a Standard Flood Insurance Policy ("SFIP") issued by Nationwide. The SFIP is itself a codified federal law, found in its entirety at 44 C.F.R. Pt. 61, App. A(1).

7. In issuing a SFIP, Nationwide acts as a WYO Program carrier participating in the U.S. Government's Nationwide Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968, as amended ("NFIA"),² and appearing herein in its "fiduciary"³ capacity as the "fiscal agent of the United States"⁴ and at the expense of the federal treasury.⁵

² See 42 U.S.C. §4001, *et seq.*

³ See 44 C.F.R. 62.23(f).

⁴ See 42 U.S.C. §4701(a)(1); *Gowland v. Aetna Cas. & Surety Co.*, 143 F.3d 951, 953 (5th Cir. 1998).

⁵ See 42 U.S.C. §4071(d)(1); *Van Holt v. Liberty Mutual Fire Ins. Co.*, 163 F.3d 161 (3rd Cir. 1998).

8. Pursuant to the jurisdictional grant of 42 U.S.C. §4072, the U.S. Congress tendered “original, exclusive” jurisdiction over disputes involving payment of U.S. Treasury funds under the NFIP only to the United States District Courts.⁶ There is no basis under the NFIA or any of the controlling statutes for a state court or anyone other than a United States District Judge to award U.S. Treasury Funds to an insured under a SFIP.

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Fleming and is being filed with the Chancery Court.

WHEREFORE, Nationwide hereby requests that this action be removed to the United States District Court for the Middle District of Tennessee and grant any other and further relief that this Court deems just and appropriate.

Respectfully submitted,

HARDIN, PARKES, KELLEY & CARTER, PLLC

BY: s/ J. Russell Parkes
J. RUSSELL PARKES, #12453
Attorney for Defendant
102 West 7th Street
Post Office Box 929
Columbia, TN 38402
(931) 388-4022

⁶ See 42 U.S.C. §4072; *Van Holt v. Liberty Mutual Fire Ins. Co.*, 163 F.3d 161, 166 (3rd Cir. 1998).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October 2011, a copy of the foregoing Notice of Removal was mailed via first-class mail, postage prepaid, to:

Wm. Kennerly Burger
12 Public Square North
Murfreesboro, TN 37130
Attorney for Petitioner

and

GMAC Mortgage, LLC
2711 N. Hasdell Avenue, Suite 900
Dallas, Texas 75204
Defendant

s/ J. Russell Parkes
Attorney